



General Assembly

Distr.: General
17 October 2007

Original: English

United Nations Commission on International Trade Law

Resumed fortieth session

Vienna, 10-14 December 2007

UNCITRAL rules of procedure and methods of work

Note by the Secretariat*

Contents

	<i>Paragraphs</i>	<i>Page</i>
III. Practice with the implementation of the applicable rules of procedure	1-45	2
A. Rule 45: duties of the Secretary-General	2-4	2
B. Rule 60: general principles as regards public and private meetings	5-8	2
C. Rules 96, 98 and 102: recourse to subsidiary organs, drafting of legal texts and referral of texts emanated from the work of the Commission to the General Assembly and consideration of these texts by the General Assembly	9-45	3
1. Commission subsidiary organs	14-32	6
(a) Sessional subsidiary organs	16-21	6
(b) Intersessional subsidiary organs: working groups	22-30	8
(c) Special Rapporteur	31-32	10
2. Drafting legal texts	33-42	11
3. Referral of texts emanated from the work of the Commission to the General Assembly and consideration of these texts by the General Assembly	43-45	15

* This note is submitted late due to the need to complete consultations and finalize subsequent amendments.



III. Practice with the implementation of the applicable rules of procedure

1. The present addendum describes the practice with the implementation of rules 45 (duties of the Secretary-General), 60 (public and private meetings), and 96, 98 and 102 (establishment of subsidiary organs) of the Rules of Procedure of the General Assembly in the Commission and its subsidiary organs.

A. Rule 45: duties of the Secretary-General

2. The rule reads as follows: “The Secretary-General shall act in that capacity in all meetings of the General Assembly,* its committees and its subcommittees. He may designate a member of the Secretariat to act in his place at these meetings.”

3. The indications that the Secretary-General himself or someone on his behalf was present at the Commission’s meetings are found in a number of the Commission’s reports, mostly with the reference to a person who opened the Commission’s session or made a statement on financial implication of Commission decisions.

4. The Secretary-General opened the ninth session of the Commission, in 1976,¹ and in addition addressed the Commission in one occasion, at its fifth session, in 1972.² The Secretary-General is often represented at the meetings of the Commission by Under-Secretary-General for Legal Affairs, the Legal Counsel of the United Nations.³ In other occasions, the Secretary-General was represented by the Director of the General Division of the Office of Legal Affairs,⁴ the Director-General of the United Nations Office at Geneva⁵ or another official, such as the Director of the International Trade Law Division of the Office of Legal Affairs, the Secretary of the Commission.⁶ (See also A/CN.9/638/Add.3, with reference to rule 112).

B. Rule 60: general principles as regards public and private meetings

5. The rule reads as follows: “The meetings of the General Assembly and its Main Committees shall be held in public unless the organ concerned decides that exceptional circumstances require that the meeting be held in private. Meetings of

* The rule is based directly on a provision of the United Nations Charter (Article 98).

¹ A/31/17, para. 3.

² A/8717, para. 2.

³ See A/7216, para. 8; A/8017, para. 1; A/8717, para. 1; A/32/17, para. 3; A/33/17, para. 3; A/34/17, para. 3; A/35/17, para. 3; A/36/17, para. 3; A/37/17, para. 3; A/38/17, para. 3; A/39/17, para. 3; A/40/17, para. 3; A/41/17, para. 3; A/44/17, para. 3; A/45/17, para. 3; A/49/17, para. 3; A/50/17, para. 3; A/51/17, para. 3; A/52/17, para. 3; A/53/17, para. 3; A/55/17, para. 3; and A/57/17, para. 3.

⁴ See A/7618, para. 1; A/9617, para. 1; and A/10017, para. 3.

⁵ See A/9017, para. 1.

⁶ See, e.g., A/7618, paras. 135 and 142; A/8417, paras. 1 and 19; A/8717, paras. 19, 31, 49 and 60; and A/31/17, para. 43.

other committees and subcommittees shall also be held in public unless the organ concerned decides otherwise.”

6. The Commission is an organ of limited membership. According to the legal opinion of the Office of Legal Affairs, meetings of organs of limited membership may be closed to all but members of the organ and essential Secretariat members, and there is no provision of the Charter in conflict with these rules and practices of the General Assembly. The legal opinion further states that past experience would demonstrate that in exceptional circumstances the holding of such private meetings is essential for the performance of the functions of the organ concerned. The organ may decide to close the meeting only to the press and the public and to allow representatives of other Member States and observers of organizations or only representatives of other Member States.⁷

7. The United Nations practice as regards private (the term “closed” is more commonly used in this context) meetings has evolved. In the early years, closed meetings meant that they were closed to all but members of the organ and the Secretariat.⁸ Later when informal consultations and meetings started being used more frequently, closed meetings were gradually open to others entitled to attend the open meetings except the public. The terms “public/open” and “private/closed” meetings now seem to be used in relation to the attendance of the public unless decided otherwise by the organ concerned. The decision may not be discriminatory.

8. The Commission records do not indicate that the Commission has ever taken decision to hold private meetings. The Commission records refer to various organs of limited membership established to undertake tasks during the Commission sessions.⁹ Although the records do not explicitly state so, it may be assumed that the meetings of some of these organs might have been held in private, judging from the tasks assigned to these organs and specific knowledge required to fulfil the task (e.g., knowledge of the Arabic language).¹⁰ Even in these situations, no formal decision by the Commission that meetings were to be held in private might have been taken. The same is true with respect to working groups’ meetings. (See further A/CN.9/638/Add.5 for the practice of granting access to observers to meetings of the Commission and its subsidiary organs).

C. Rules 96, 98 and 102: recourse to subsidiary organs, drafting of legal texts and referral of texts emanated from the work of the Commission to the General Assembly and consideration of these texts by the General Assembly

9. The rules read as follows: “The General Assembly may establish such committees as it deems necessary for the performance of its functions” (rule 96);

⁷ See *United Nations Juridical Yearbook, 1971* (United Nations publication, Sales No. E.73.V.1), p. 196.

⁸ *Ibid.*, pp. 195-196; and *ibid.*, 1972 (United Nations publication, Sales No. E.74.V.1), p. 169, para. 4.

⁹ See, e.g., A/10017, para. 40; A/31/17, annex I, Introduction, para. 2, and annex II, Introduction, para. 2; A/32/17, annex I, paras. 5, 6, 118-120, 211, 250 and 433; A/33/17, para. 66 and annex I, paras. 10, 37, 55, 90, 99, 112 and 163; and A/40/17, paras. 23, 32, 43, 114 and 140.

¹⁰ A/39/17, para. 103.

“The Main Committees of the General Assembly are the following: (a) Disarmament and International Security (First Committee); (b) Special Political and Decolonization Committee (Fourth Committee); (c) Economic and Financial Committee (Second Committee); (d) Social, Humanitarian and Cultural Committee (Third Committee); (e) Administrative and Budgetary Committee (Fifth Committee); and (f) Legal Committee (Sixth Committee)” (rule 98);¹¹ and “Each committee may set up subcommittees, which shall elect their own officers” (rule 102).¹² These rules are applicable mutatis mutandis to the establishment by the Commission of its subsidiary organs.

10. The provisions accompanying rule 102 encourage recourse by the General Assembly and its organs to subcommittees or working groups of limited size but representative of membership, for the purpose of facilitating work, in particular for drafting legal texts.¹³ This is in the light of the increase in the number of Members of the United Nations, which has created a situation in which it frequently happens that more than 100 delegations are present and most of them participate in the debates in the General Assembly organs. Although the presence of such a large number of delegations involves no practical difficulties when statements of the positions of Governments are being made, it makes it more difficult to discuss concrete points, to have a rapid exchange of views on subjects where ideas differ or to draft and modify texts. It is therefore recommended that in many cases the examination of agenda items by the organ concerned would be greatly facilitated if, as soon as possible and especially when the main points of view have been expressed, the organ decided, on the initiative of its presiding officer or of one or more of its members, to set up a subcommittee or working group. This procedure is

¹¹ Rule 98 is accompanied by a footnote that refers to paragraphs 17, 30 and 44 of the introduction to the Rules of Procedure of the General Assembly and paragraphs 29 to 38 of annex IV to the Rules of Procedure of the General Assembly, entitled “Conclusions of the Special Committee on the Rationalization of the Procedures and Organization of the General Assembly”. The provisions in the introduction part provide drafting history of rule 98. The referred provisions of the annex describe the functions of the General Assembly’s First, Second, Third and Special Political Committees, conflict of competence and distribution of work among them.

¹² Rule 102 is accompanied by a footnote that refers to paragraph 14 of annex I entitled “Recommendations and suggestions of the Special Committee on Methods and Procedures of the General Assembly approved by the Assembly”, to paragraph 29 of annex II entitled “Methods and procedures of the General Assembly for dealing with legal and drafting questions”, to paragraph (e) of annex III reproducing General Assembly resolution 1898 (XVIII) of 11 November 1963, adopted on the recommendation of the *Ad Hoc* Committee on the Improvement of the Methods of Work of the General Assembly, and to paragraph 66 of annex IV (see the preceding footnote).

¹³ See paragraph 14 of annex I, paragraph (e) of annex III, and paragraph 66 of annex IV, of the Rules of Procedure of the General Assembly.

considered particularly helpful when there is general agreement on the question under discussion but disagreement on points of detail.¹⁴

11. It is further recommended that: “[s]ubcommittees or working groups could, in most cases, consist of representatives of the delegations with the closest interest in the agenda item, representatives who are especially competent to deal with the problem under discussion and others chosen in such a way as to ensure that the sub-committee or working group will be broadly representative, geographically and politically. [...] These bodies could meet either in public or in private, according to the circumstances, and could either follow formal procedures or discuss matters informally. Their function would be to make it possible for those primarily interested in an item to exchange views, thus facilitating subsequent agreement and compromise solutions; they could prepare draft resolutions or at least formulate alternative solutions: they could appoint rapporteurs to present their conclusions and to give the necessary explanations to the committee which established them. The committee itself would be entirely free to take final decisions but, since all aspects of the problem would have been given minute examination, it would undoubtedly find its own work greatly facilitated both with regard to substance and to the time thus saved. It would also often be possible for the committee to consider other items on its agenda while the sub-committee or working group was carrying out its assignment.”¹⁵

12. With regard to the consideration by the General Assembly conventions prepared by groups of experts not acting as governmental representatives, or by conferences in which not all Members of the United Nations have been invited to take part, it is recommended that these conventions should be considered in detail in the General Assembly: (i) by one of the Main Committees, especially the Legal Committee; or (ii) if that is not possible, by an ad hoc committee established by the General Assembly, during or between sessions; or (iii) alternatively, by a conference of plenipotentiaries, convened by the General Assembly for such purpose and for possible signing of the convention, between two of its own sessions.¹⁶

13. The sections below describe the practice of the Commission with the establishment of its subsidiary organs and other practices relevant to the issues addressed in the rules and the accompanying provisions.

¹⁴ Annex III of the Rules of Procedure of the General Assembly in footnote (d) (30) recalls in this connection that in the course of the first sessions of the General Assembly frequent use was made of subcommittees and working groups and that they were of great assistance to the General Assembly in the preparation of texts. It states that, as far back as 1947, the report of the Committee on Procedures and Organization (A/388, para. 21) expressed itself on this subject as follows: “The Main Committees should consider carefully at an early stage in their work how their programmes might be expedited by the establishment of subcommittees. It is, of course, impossible to adopt fixed rules on this matter. If the debate in full committee showed that there was general agreement on the question under discussion but disagreement on points of detail, it would clearly be desirable to set up a small drafting committee to prepare a resolution for submission to the Main Committee. Technical questions on which there is no substantial disagreement should be referred to subcommittees as quickly as possible. In some cases the work of subcommittees would be facilitated by working informally, and on occasion, in private.”

¹⁵ See annex III of the Rules of Procedure of the General Assembly, footnote (d)(31) and (32).

¹⁶ Paragraph 14 of annex I.

1. Commission subsidiary organs

14. At its first session, in 1968, the Commission, in the course of consideration of its working arrangements and methods, discussed *inter alia* the possible establishment of sessional and intersessional committees, working groups or other appropriate bodies, and the appointment of special rapporteurs, selected from among the members of the Commission for the study of particular subjects.¹⁷ It was noted at that time that the particular procedures to be adopted by the Commission would depend to a large degree on the particular topics concerned, and accordingly, it was desirable that in the matter of procedures of work the Commission should maintain considerable flexibility. The possibility that certain procedures may have financial implications was also a matter to be taken into account, and where financial implications were involved the advice of the Secretariat should be obtained.¹⁸

15. Since its first session, the Commission has established sessional and intersessional subsidiary organs.¹⁹ Sessional subsidiary organs are set up to undertake work during the session at which they were set up and discontinue their existence after the session ends. Intersessional subsidiary organs work between Commission sessions and discontinue their work according to the Commission decision.

(a) *Sessional subsidiary organs*

16. The first reference to a sessional subsidiary organ is found in the Commission's report on the work of its first session. At that session, the Commission established a sessional working group to advise the Commission on the methods of work to be followed on the priority topics.²⁰ The working group consisted of the members of the Commission's bureau at that session and was open to all other interested representatives and observers attending the session. It discontinued its work at the same session upon presenting a working paper containing its recommendations to the Commission.²¹

17. Since its second session, the Commission has established committees of the whole that have worked during the Commission's sessions.²² At some sessions, two committees of the whole have been established, each to consider during a session a specific agenda item referred to them by the Commission, usually a legal text before the Commission for adoption or approval. Committees of the whole may hold their meetings in parallel.²³ Such an arrangement allows the Commission to deal with a heavy agenda in a more efficient manner. Their composition is the same as that of the Commission. Committees of the whole have their own officers, usually a Chair and Rapporteur (in at least one case, two rapporteurs were elected) who may or may not be the officers of the Commission at that session.

¹⁷ A/7216, para. 36.

¹⁸ *Ibid.*, paras. 37, 38 and 43.

¹⁹ See, e.g., *ibid.*, para. 45, where reference is made to a working group established to advise the Commission at the first session on the methods of work; and para. 52, where reference is made to a working group established to consider comments from Governments received on the priority topics, which was supposed to meet one week before the second session was to open.

²⁰ *Ibid.*, para. 45.

²¹ *Ibid.*, paras. 46-47. For the working paper, see document A/CN.9/9.

²² A/7618, para. 8.

²³ See, e.g., A/7618, para. 8; A/8017, para. 8; A/31/17, para. 9; and A/32/17, paras. 10-11.

18. A committee of the whole in many respects replaces the Commission in consideration of the agenda item(s) referred to it.²⁴ However, it has no authority to take binding decisions and its conclusions are always subject to subsequent review and approval by the Commission.

19. Committees of the whole report the results of their work to the Commission. The substance of their work is reflected in the Commission's report on the work of the relevant session. No standard practice exists in this respect. At some sessions, no distinction was drawn between the records of the proceedings of a committee of the whole and those of the Commission in plenary.²⁵ In such cases, the report of the committee, upon approval of its substantive part by the Commission, was merged with the report of the Commission, usually upon the Commission's explicit decision to that effect. In other cases, a clear distinction was drawn between the proceedings of the committee and those of the Commission in plenary. In some of those cases, this was achieved by annexing the report of a committee of the whole to the Commission's report and recording in the main body of the report deliberations and decisions in plenary.²⁶ In other cases, the reports of committees of the whole were reproduced in the main body of the Commission's report with a clear distinction between the actions by the committee and the Commission in plenary.²⁷

20. The Commission is not bound by the results of the committee's work and may make amendments to what was agreed in the committee.²⁸ Upon recommendation of the committee to the Commission, the Commission adopts binding decisions that determine the future course of its work and work of its working groups and the Secretariat.

21. The Commission or a committee of the whole may establish other sessional organs to undertake smaller tasks during a session, such as to consider a sub-item or a specific issue or to prepare a draft decision of the Commission. Such organs have been called by various terms, such as "working parties",²⁹ "ad hoc working parties/groups",³⁰ "drafting parties/groups",³¹ and "special working groups/special drafting groups".³² They undertake different tasks assigned to them by the Commission or the committee and report the results of their work, including any recommendations, to the parent organ.³³ Since the Commission's eleventh session,³⁴ the term "drafting group" has been used mainly to refer to organs established by the Commission or its subsidiary organs primarily to finalize the drafting of the text of a legal instrument under consideration after an intergovernmental body had agreed on substantive points and to ensure consistency between various language versions.

²⁴ For types of decisions taken by committees of the whole, see, e.g., A/32/17, annex II, paras. 48, 49, 55 and 56.

²⁵ See, e.g., A/61/17, paras. 13-187.

²⁶ See, e.g., A/31/17, annexes I and II; and A/32/17, annexes I and II.

²⁷ A/62/17 (Part I), paras. 14-157.

²⁸ See, e.g., A/31/17, paras. 41 and 52-53.

²⁹ A/8017, para. 12.

³⁰ A/33/17, para. 66; A/39/17, para. 103; and A/40/17, paras. 23, 32, 43, 114 and 140.

³¹ A/9017, paras. 83 and 115; and A/10017, para. 40.

³² A/32/17, annex I, paras. 118-120, 211, 250 and 433.

³³ See, e.g., A/32/17, annex I, paras. 5, 6, 118-120, 211, 250 and 433.

³⁴ A/33/17, para. 34.

(b) *Intersessional subsidiary organs: working groups*

22. The Commission established its first intersessional intergovernmental subsidiary organ, called a working group, already at its first session. The working group was of limited membership but open for attendance by other States members of the Commission who were entitled to present their observations orally or in writing. The mandate given to the working group was to examine the comments of the Governments, reports and studies received on the priority topics, and generally to consider the progress made in the work programme and make appropriate proposals and recommendations for the Commission to consider at its second session. The Secretary-General was requested to convene a meeting of the Working Group one week before the opening of the second session if, in the opinion of the Secretary-General, arranging such a meeting would be of assistance to the Commission's future work.³⁵

23. At its second session, the Commission established three working groups to work between Commission's sessions, all of limited membership but open for attendance to other States members of the Commission and interested international organizations. No mention of participating in the work of the working groups by States not members of the Commission was made.³⁶ Each working group was given a specific mandate and assigned a name corresponding to the subject matter referred to it (on the International Sale of Goods, on Prescription, and on International Shipping Legislation).³⁷ The Commission decided that the term "working group" would be used for the present for all intersessional bodies set up at its second session.³⁸ This term has since been used for all intersessional subsidiary organs established by the Commission.

24. The views in the Sixth Committee on the use of working groups by the Commission were diverse. Many representatives in the Sixth Committee commended the Commission for the effective manner in which it had delegated authority to its working groups, which was seen as a sustained effort that would enable the Commission to advance its work between its annual sessions.³⁹ Other representatives cautioned against a tendency towards the excessive use of working groups, which was costly and shifting the Commission's authority over its substantive work to working groups.⁴⁰ The General Assembly, since early years of the Commission, has endorsed the use of working groups.⁴¹

25. The pattern established for working groups at the first two sessions (i.e., limited membership, open to other States members of the Commission and interested international organizations, with a specific mandate) continued at the

³⁵ A/7216, para. 52

³⁶ See further A/CN.9/638/Add.5 for the evolving practice in the Commission and its subsidiary organs in this regard.

³⁷ A/7618, paras. 38, 46 and 133 (3).

³⁸ *Ibid.*, para. 184.

³⁹ See, e.g., A/7747, paras. 10 and 19; A/8146, para. 11; A/8506, para. 12; A/9408, para. 13; A/9920, para. 10; and A/10420, para. 10.

⁴⁰ A/7747, para. 10; and A/8506, paras. 13-14.

⁴¹ See, e.g., resolution 2502 (XXIV), para. 3, by which the General Assembly noted with appreciation the progress made on the priority topics, including the establishment of intersessional working groups.

fourth,⁴² fifth⁴³ and twelfth⁴⁴ sessions. As regards their composition, the view often prevailed that a working group would carry out its work more expeditiously if it consisted of fewer members.⁴⁵ In considering their composition, the Commission faced problems with achieving and maintaining a reasonable balance between efficiency and fair representation of geographic regions, economic interests and legal systems.⁴⁶ At its fourteenth session, the Commission agreed, as a matter of principle, that in working groups with limited memberships, the distribution of memberships should be equitable among the members of the Commission, while maintaining adequate representation of the different regions and of the principal economic and legal systems of the world and developed and developing countries.⁴⁷ The issue of the composition of the Commission's working groups was subject to debate in the Sixth Committee,⁴⁸ which in particular resulted in adoption of General Assembly resolution 2766 (XXVI) in which the Commission was recommended, in its use of working groups and other working methods, to ensure full consideration of the needs of all regions (para. 2 (e) of the resolution).

26. Once established, the composition of working groups of limited membership remained the same unless decided otherwise by the Commission⁴⁹ or due to the expiration of the member's membership in the Commission.⁵⁰ In one case, the Commission decided to appoint alternate members to those members of the working group whose term of office was due to expire, on the understanding that if the original members were re-elected, they would continue serving as members of the working group.⁵¹ In at least one instance, a member itself had indicated that it was relinquishing its membership in a working group in order to accommodate inclusion of a new member in the working group.⁵²

27. Gradually the size of working groups increased and, since its thirteenth session, the Commission has followed the policy of establishing full-membership working groups.⁵³ The Commission envisaged that it might reconsider the size of any particular working group when a new task was assigned to it.⁵⁴ Until present no such reconsideration has taken place, and the current six working groups of the Commission are open to all States members of the Commission.

28. In the early years of the Commission, it was assumed that working groups were created for a particular task and that they would be dissolved at the completion

⁴² A/8417, para. 19.

⁴³ A/8717, para. 61.

⁴⁴ A/34/17, paras. 31 and 100.

⁴⁵ See, e.g., A/8417, paras. 17 and 32; and A/8717, para. 30.

⁴⁶ See, e.g., A/8417, para. 16. This was the issue faced not only at the time of the establishment of a working group but also at other stages, when, for example, the Commission had to fill in vacancies in the working group (see, e.g., A/9617, paras. 83-84; and A/10017, para. 115).

⁴⁷ A/36/17, para. 69.

⁴⁸ See, e.g., A/8506, paras. 12 and 17; and A/8896, para. 30.

⁴⁹ See, e.g., A/8017, para. 166 (9).

⁵⁰ See, e.g., A/8417, para. 119; A/9017, para. 139; and A/9617, paras. 83-84.

⁵¹ A/8017, para. 166 (5).

⁵² A/8417, para. 93.

⁵³ A/35/17, para. 143 (5); A/38/17, para. 143; and A/41/17, para. 221; as confirmed in A/45/17, para. 69.

⁵⁴ A/45/17, para. 69.

of that task.⁵⁵ Accordingly, the names of the working groups indicated a specific mandate given to a working group. In later years, working groups have been treated as continuing bodies so that, on the completion of one task, a new task has been assigned to them. This shifting approach sometimes resulted in situations where the name originally given to a working group did not reflect any longer a new task assigned to it.⁵⁶ In most cases, working groups were renamed to indicate new tasks assigned to them.⁵⁷ At present, all six working groups of the Commission are numbered (I to VI). The current task before each of the working groups is indicated in parentheses that follow the number of the working group.

29. In the early years, the Commission set out the mandate for its working groups in specific terms.⁵⁸ In later years, the mandate has been defined broadly and substantive discretion has been given to working groups as regards the implementation and interpretation of the mandate.⁵⁹ Since early years, it has been the practice for the Commission to establish a timeframe for the completion of the project by its working group with flexibility, on the basis of the prevailing view that the quality should not be jeopardized by establishing an unrealistic deadline.⁶⁰

30. From 1978 until recently, the Commission had three working groups. Each was authorized to meet twice a year for two weeks, for a total of 12 weeks of working group meetings. That pattern was changed in 2001, when the Commission decided to have six working groups, meeting as a general rule twice a year for a one-week session.⁶¹ (See A/CN.9/638, para. 22.)

(c) *Special Rapporteur*

31. On one occasion only, at the Commission's second session, a special rapporteur was appointed, Mr. Ion Nestor (Romania), to study problems relating to the application and interpretation of the existing conventions in the area of

⁵⁵ See, e.g., the Working Group on Time-Limits and Limitations (Prescription), which upon completion of the draft convention ceased to exist. Also the Working Group on International Shipping Legislation (A/33/17, para. 60).

⁵⁶ See A/38/17, para. 115, for the assignment of the project on the liability of operators of transport terminals to the Working Group on International Contract Practices; and A/41/17, para. 243, for the assignment of a project in the area of public procurement to the Working Group on New International Economic Order.

⁵⁷ See, e.g., A/41/17, para. 230, envisaging renaming the Working Group on International Negotiable Instruments to the Working Group on International Payments, to reflect possible work of the working group in the area of electronic funds transfers; A/47/17, para. 147, for the renaming of the Working Group on International Payments to the Working Group on Electronic Data Interchange, to reflect a new project assigned to it, in 1992; A/50/17, para. 449, for the renaming of the Working Group on New International Economic Order to the Working Group on Insolvency Law, once a project on insolvency law was assigned to it, in 1995; A/51/17, para. 224, for the renaming of the Working Group on Electronic Data Interchange to the Working Group on Electronic Commerce, to reflect possible future work in the area of electronic commerce to be undertaken by the working group; and A/54/17, para. 434 (c), for the renaming of the Working Group on Insolvency Law to the Working Group on Arbitration, once a project in the area of international commercial arbitration was assigned to it, in 1999.

⁵⁸ See, e.g., A/7618, paras. 38, 46 and 133; and A/39/17, paras. 88 and 113.

⁵⁹ A/56/17 and Corr.3, para. 358; A/59/17, paras. 81-82; and A/61/17, para. 209.

⁶⁰ It is also common for the Commission to request its working groups to finalize the work expeditiously (see, e.g., A/9617, paras. 17-18, 20 (3) and 53 (3); and A/31/17, para. 33 (2)).

⁶¹ A/56/17, para. 425.

international commercial arbitration and other related problems.⁶² His mandate continued through the fifth session of the Commission.⁶³

32. The decision of the Commission to appoint a special rapporteur on the topic of international commercial arbitration and his subsequent work was welcomed in the Sixth Committee.⁶⁴ The suggestions were made in the Commission for more frequent recourse by the Commission and its working groups to the services of individuals as special rapporteurs.⁶⁵ No such recourse has been made since the Commission's fifth session.

2. Drafting legal texts

33. Most of UNCITRAL texts have been prepared by the Commission's working groups. The Commission has authorized its working groups to request the Secretary-General to prepare studies and other documents that are necessary for the continuation of their work.⁶⁶ The work in the working group has often been based on the preliminary drafts prepared by the Secretariat,⁶⁷ pursuant to the Commission's decisions, in particular the decision taken at the Commission's eleventh session, that the work in its working groups on any given subject matter should as a general rule be preceded by the Secretariat's preparatory work on that subject.⁶⁸

34. Until the drafting of legal texts is finished in a working group, the working group is generally left to complete its substantive task without intervention from the Commission,⁶⁹ unless the working group requests the Commission to provide guidance.⁷⁰ The Commission itself may decide to do so but nowadays it rarely does

⁶² A/7618, para. 112.

⁶³ The Special Rapporteur submitted a preliminary report on the subject (A/CN.9/42) at the third session of the Commission, at which the Commission decided to extend the mandate of the Special Rapporteur until the fifth session (A/8017, para. 156). The final report of the Special Rapporteur (A/CN.9/64) was before the Commission at its fifth session (A/8717, para. 80).

⁶⁴ A/8146, para. 21; and A/8896, para. 36.

⁶⁵ See, e.g., A/8017, para. 70; and A/9017, para. 130.

⁶⁶ See, e.g., A/8417, para. 92 (2).

⁶⁷ See, e.g., A/47/17, paras. 83-86; A/50/17, para. 12; and A/51/17, para. 56.

⁶⁸ A/33/17, paras. 67-68. See also A/CN.9/638, para. 20.

⁶⁹ See A/CN.9/638, para. 17.

⁷⁰ The Commission's report on the work of its fourth session notes that the Working Group on Sales referred to the Commission for consideration a number of issues, all of which were considered by the Working Group questions of principle (A/8417, paras. 56 and 85). Some of them were in the form of specific questions posed to the Commission (A/8417, para. 72). The same practice was followed at the subsequent sessions (see, e.g., A/31/17, para. 24).

so.⁷¹ A working group submits a progress report on the work of each of its sessions to the Commission.

35. After a working group has finished its preparatory work, it submits a draft text on an instrument prepared for the consideration by the Commission at its annual session. A working group usually accompanies the result of its preparatory work with recommendations concerning future work in the area.⁷²

36. On several occasions, the substantive preparation of a draft text has been undertaken by the Secretariat with the assistance of outside experts. For example, drafts of the arbitration rules,⁷³ and of the conciliation rules,⁷⁴ with commentaries, were prepared by the Secretariat in consultation with experts in the field. The preparation of the Legal Guide on Electronic Funds Transfers was undertaken by the Secretariat in cooperation with the Study Group on International Payments comprising experts from international organizations and banking and trade institutions.⁷⁵ The Commission entrusted the Secretariat also with the preparation of administrative guidelines, in the form of recommendations, to arbitral institutions and other relevant bodies to assist them in adopting procedures for acting as appointing authority or for providing administrative services in cases to be conducted under the UNCITRAL Arbitration Rules.⁷⁶ The Secretariat also prepared draft notes on organizing arbitral proceedings⁷⁷ and partly drafted chapters of the legislative guide on privately financed infrastructure projects.⁷⁸

37. In the early years, some delegates, both in the Commission and in the Sixth Committee, expressed concern about the Commission's practice of requesting the Secretariat to do work which fell within the framework of the terms of reference of the Commission itself. The view often prevailed that the Commission's secretariat had played an indispensable role in the Commission's work and performed a valuable service in the preparatory work.⁷⁹ This view was reflected in a number of

⁷¹ E.g., at the Commission's fifth session, in considering the report of the Working Group on International Legislation on Shipping, most representatives agreed that, consistent with working methods developed in relation to other items, the Commission should not take action on the substantive matters that were in the course of consideration by the Working Group. Several representatives however suggested that the Commission should give the Working Group certain guidelines for the continuation of its work. In its decision on the report of the Working Group adopted at that session, the Commission considered that the Working Group should give priority in its work to the basic question of the carrier's responsibility and to that end recommended that the Working Group keep in mind the possibility of preparing a new convention (A/8717, paras. 47 and 51 (2)).

⁷² E.g., A/61/17, para. 183.

⁷³ See A/CN.9/97, A/CN.9/112 and Add.1, A/CN.9/113 and A/CN.9/114. See also A/31/17, paras. 46-49.

⁷⁴ See A/CN.9/166, A/CN.9/179 and A/CN.9/180. See also A/35/17, paras. 29-30.

⁷⁵ See A/CN.9/250 and Add.1-4 and A/CN.9/266 and Add.1 and 2. See also A/37/17, para. 73; A/40/17, para. 342; and A/41/17, para. 228.

⁷⁶ See A/CN.9/222. See also A/37/17, paras. 74-75.

⁷⁷ See A/CN.9/410 and A/CN.9/423. Initially presented and referred to as draft guidelines for preparatory conferences in arbitration proceedings (see A/CN.9/396/Add.1). See also A/49/17, paras. 111-112 and 194; A/50/17, paras. 314-315 and 370; and A/51/17, paras. 11 and 52 (c).

⁷⁸ See A/CN.9/438 and Add.1-3. See also A/52/17 and Corr.1, paras. 231-247.

⁷⁹ See, e.g., A/9408, para. 17; A/9920, paras. 10 and 13; and A/10420, para. 10.

General Assembly resolutions related to the work of UNCITRAL.⁸⁰ The Commission itself in numerous occasions reiterated this view.⁸¹ It has delegated a variety of different tasks to its secretariat⁸² and, in the light of limited resources available to the Secretariat, has given to it a certain measure of discretion in the implementation of the assigned tasks.⁸³

38. It is common for the Commission and its working groups to authorize the Secretariat to have recourse to assistance of outside experts in its preparatory work.⁸⁴ Such assistance may take different forms, most commonly the form of intersessional informal expert group meetings. Most recently, concern was expressed about the excessive recourse to such meetings. The General Assembly, in its resolutions 60/20 and 61/32, recalled that the responsibility for the work of the Commission lies with the meetings of the Commission and its intergovernmental working groups, and stressed in this regard that information should be provided regarding meetings of experts, which bring an essential contribution to the work of the Commission.

39. Steps leading to finalization of a document in the Commission depend on the nature of the document. For example, a model law is finalized and adopted by UNCITRAL at its annual session, as opposed to a convention, which is approved in a draft form by the Commission at its annual session and transmitted with a recommendation for further action to the General Assembly (see paragraphs 43-45 below).

40. The Commission, before finalizing and adopting or approving a draft text prepared by its working group or the Secretariat, as a rule requests that it be circulated for comment to all States as well as relevant organizations. This

⁸⁰ See, e.g., resolutions 35/51, para. 12; 36/32, para. 11; 37/106, para. 12; 38/134, para. 12; 40/71, para. 10; 41/77, para. 12; 42/152, para. 12; 43/166, para. 10; 57/19; and 58/75.

⁸¹ See, e.g., A/7618, para. 181; A/8017, para. 220; A/8417, para. 160; A/50/17, paras. 442-443; A/54/17, paras. 397 and 408; A/55/17, paras. 442 and 453; A/56/17, paras. 403 and 415; A/57/17, paras. 258-271; and A/58/17, paras. 257-261.

⁸² Preparation of studies and reports on matters that are being considered for possible future inclusion in the work programme; legal research; drafting and revision of working papers and legislative texts on matters already included in the work programme; reporting on Commission and working group meetings; and the provision of a range of administrative services to UNCITRAL and its working groups. Some Commission's programmes, such as technical assistance, coordination and promotional activities and dissemination of information, are performed primarily through the Commission's secretariat. The Commission has supervised and made suggestion as to general direction of the relevant activities. See, e.g., as regards coordination activities, A/37/17, para. 118; A/38/17, para. 103; A/41/17, para. 261; A/47/17, para. 167; and A/48/17, para. 268; as regards technical assistance activities, A/38/17, para. 130; A/43/17, para. 92; A/45/17, paras. 59-61; and A/47/17, para. 185; as regards dissemination and promotional activities, A/43/17, paras. 78-81; and A/48/17, paras. 285 and 324; and as regards organizing special events, e.g., A/48/17, para. 290.

⁸³ See, e.g., A/35/17, paras. 141-142; A/37/17, para. 106; A/42/17, para. 343; A/60/17, para. 191; and A/61/17, paras. 209 and 220.

⁸⁴ See, e.g., A/8017, para. 72; A/52/17, para. 247; and A/53/17, para. 206.

procedure has generally been followed since the Commission's seventh session.⁸⁵ Several representatives in the Sixth Committee endorsed this procedure, stressing that it ensured that the uniform rules approved by UNCITRAL would find wide acceptance.^{86, 87}

41. Finalization and adoption or approval of a draft text takes place in the Commission, generally after discussion of the text prepared by its working group or the Secretariat article by article.⁸⁸ A drafting group is usually established to finalize the drafting and ensure authenticity of all language versions of the text (see paragraph 21 above).⁸⁹ The consideration of texts by the Commission is largely seen as a final round of negotiations of the text that had been agreed upon in the working group. In some instances, the Commission has to consider outstanding issues or issues on which no consensus was reached in the working group.⁹⁰ Discussion in these situations sometimes proceeds in a committee of the whole, not in plenary, the report of which is subsequently considered and approved by the Commission in plenary.⁹¹ In one instance, upon completion of the working group's work, the Commission referred the project back to the working group for reconsideration of some issues.⁹²

⁸⁵ A/9617, para. 53 (4). Before that practice, as regards the draft convention on prescription, the Commission, at its fourth session, requested that the draft prepared by its working group be circulated for comment only to States members of the Commission (A/8417, para. 118). At its fifth session, upon approval of the draft convention and its transmission to the General Assembly, the Commission requested the Secretary-General to circulate the draft convention to all Governments and interested organizations for comments and proposals (A/8717, para. 20 (2)(c)).

⁸⁶ A/10420, para. 12.

⁸⁷ For examples of subsequent implementation of this procedure, see, e.g., A/10017, para. 17 (3); A/32/17, paras. 15-16; A/36/17, para. 44 (3); A/37/17, para. 13; A/39/17, para. 101 (2); A/40/17, paras. 13 and 342; A/41/17, para. 223; A/42/17, para. 14; A/43/17, para. 29; A/44/17, para. 14; A/47/17, para. 12; A/48/17, para. 12; A/51/17, para. 56; A/56/17, paras. 200, 202 and 204-237; A/58/17, paras. 14-16 and 197 (3); A/60/17, para. 167; and A/61/17, para. 87.

⁸⁸ See, e.g., A/8717, paras. 15-19; A/33/17, para. 26 and annex I; A/35/17, paras. 31-104; A/38/17, paras. 14-75; A/40/17, paras. 17-330; A/42/17, paras. 15-299; A/44/17, paras. 14-222; A/46/17, paras. 15-288 and annex I; A/47/17, paras. 16-81 and 88-136; A/48/17, paras. 16-258; A/49/17, paras. 14-110 and 113-193; A/50/17, paras. 208-305 and 316-369; A/51/17, paras. 12-51 and 63-208; A/52/17, paras. 27-219; A/55/17, paras. 13-178 and 193-372; A/56/17, paras. 16-194 and 205-283; A/58/17, paras. 22-170; A/59/17, paras. 12-53; and A/60/17, paras. 12-164.

⁸⁹ See, e.g., A/40/17, para. 331; A/46/17, para. 289; A/55/17, paras. 179-180; A/56/17, paras. 195-197; and A/60/17, para. 166.

⁹⁰ See, e.g., A/31/17, para. 16.

⁹¹ See, e.g., A/31/17, paras. 38-42 and 50-55 and annexes I and II; A/50/17, paras. 13-198; A/56/17, paras. 11, 16-197 and 205-283; A/57/17, paras. 11 and 13-140; and A/61/17, paras. 11 and 87-180.

⁹² See, e.g., A/8417, para. 80. In addition, at its fifth session, the Commission discussed, article-by-article, a draft convention submitted to it by the Working Group on Prescription, adopted some articles without change and requested the Working Group to reconsider some articles in the light of the proposals and amendments made at the Commission's session. For this purpose, the Working Group held several meetings during the Commission's session and submitted the revised draft to the Commission at the same session. The Commission considered the revised draft and set up a number of drafting parties to consider further the language of certain articles and adopted these articles as recommended by drafting parties (A/8717, para. 17).

42. In one instance, the Commission adopted a text without its detailed consideration after the adoption of the text by the Commission's working group.⁹³ In another instance, the Commission held general consideration of the text prepared by the Secretariat and requested to transmit it as the recommendation to Governments and relevant institutions in the name of the Secretary-General.⁹⁴ In another instance, the Commission took note of a text prepared by the Secretariat without examining it and requested to publish the text as a product of the work of the Secretariat, not the Commission.⁹⁵

3. Referral of texts emanated from the work of the Commission to the General Assembly and consideration of these texts by the General Assembly

43. Upon finalization of a draft convention, the Commission transmits it to the General Assembly with a recommendation for further action, usually for adoption by a diplomatic conference of plenipotentiaries to be convened by the General Assembly, or by the General Assembly in plenary. The Commission considers the desirable course of action upon approval of a draft text. The Commission recommended convening a diplomatic conference of plenipotentiaries where it was confident that a final round of negotiations was needed to reach agreement on aspects of a draft convention that had not been finally settled in the Commission or to make improvements to the draft text.⁹⁶ In such cases, reference was sometimes made to the need for participation in the finalization of the text of all States, especially those not represented in the Commission.⁹⁷ In other cases, where further substantive consideration was not deemed necessary, the Commission recommended the adoption of a draft convention by the General Assembly itself. The Commission has in these cases considered also expenses involved in convening a diplomatic conference, and that all States and other relevant stakeholders had an opportunity to participate in the formulation of a draft text in the Commission and its working group and submit their written comments that were considered in the preparation of the final text.^{98, 99}

⁹³ See the Commission's decision on the adoption of the UNCITRAL Legal Guide on Drawing Up International Contracts for the Construction of Industrial Works in A/42/17, paras. 310-315. The working group, initially of limited membership (A/34/17, para. 100), became open to all States members of the Commission (A/35/17, para. 143). In addition, pursuant to the Commission's request (A/34/17, para. 100), the Secretary-General invited all Member States of the United Nations and specialized agencies and international organizations to attend meetings of the working group as observers.

⁹⁴ See the Commission's decision as regards the Recommendations to assist arbitral institutions and other interested bodies with regard to arbitrations under the UNCITRAL Arbitration Rules in A/37/17, paras. 76-85.

⁹⁵ See the Commission's decision as regards the Legal Guide on Electronic Funds Transfers in A/41/17, para. 229.

⁹⁶ A/87/17, paras. 18-20; A/31/17, paras. 40-44; A/32/17, paras. 19-34; A/33/17, para. 27; and A/44/17, paras. 223-225.

⁹⁷ See, e.g., A/32/17, para. 26; and A/44/17, para. 224.

⁹⁸ See, e.g., A/50/17, paras. 199 and 201; A/56/17, paras. 198 and 200; and A/60/17, para. 167.

44. As regards other instruments, in the early years, the Commission transferred them to the General Assembly with an invitation to recommend their use and take other appropriate actions for their promotion.¹⁰⁰ In some instances and especially in the later years, it was not found necessary to address such recommendations to the General Assembly. Instead, the Commission itself recommended that all States give favourable consideration to instruments prepared by the Commission, and requested the Secretary-General to take necessary actions for their promotion.¹⁰¹

45. As a rule, no substantive consideration of instruments prepared by the Commission takes place in the General Assembly.¹⁰² The General Assembly usually adheres to the recommendations of the Commission addressed to it.¹⁰³ Where no specific recommendation was formulated, the General Assembly, in its resolutions, in most instances reflected the Commission's decisions.¹⁰⁴

⁹⁹ In one case, the Commission, in the absence of consensus on the desirable course of action with respect to the adoption of the convention, decided to transmit the draft convention to the General Assembly with the recommendation that the General Assembly should consider the draft convention with a view of its adoption or any other action to be taken. See, e.g., A/42/17, paras. 300-302 and 304. The General Assembly in that case decided to adopt the convention after it had been considered and modified by an open-ended working group established by the General Assembly. See General Assembly resolution 43/165 on the United Nations Convention on International Bills of Exchange and International Promissory Notes. In another case, in the absence of consensus in the Commission as regards a form that an instrument prepared by the Commission should take, the Commission transmitted the instrument to the General Assembly without any specific recommendation. The understanding was that the Sixth Committee of the General Assembly would decide on the final form of the instrument. See A/38/17, paras. 77-78. The Sixth Committee was not able to reach agreement on the final form of the instrument and, upon recommendation of the Sixth Committee, the General Assembly, in its resolution 38/135 on Uniform Rules on Contract Clauses for an Agreed Sum Due upon Failure of Performance, recommended that States should give serious consideration to the text prepared by the Commission, and, where appropriate, implement it in the form of either a model law or a convention.

¹⁰⁰ See, e.g., A/31/17, para. 56 (2); A/35/17, para. 106 (2); A/37/17, para. 63 (5); A/40/17, para. 333; A/42/17, para. 315 (2); and A/47/17, para. 137 (2).

¹⁰¹ See, e.g., A/47/17, para. 82; A/48/17, para. 217 (3); A/49/17, para. 97; A/51/17, para. 209; A/52/17, para. 221; A/55/17, para. 372; A/56/17, para. 284; A/57/17, para. 141; A/58/17, para. 171; A/59/17, para. 55; and A/61/17, para. 181.

¹⁰² In one case, the General Assembly established an open-ended working group, in the framework of the Sixth Committee, that considered the draft convention prepared by the Commission and proposed modifications thereto, which were eventually accepted by the General Assembly. See footnote 99 above.

¹⁰³ For exceptions, see, e.g., A/55/17, para. 192. The Commission at that time recommended inclusion of an additional item on the agenda of the General Assembly's fifty-sixth session. No such separate agenda item was included. See General Assembly resolutions 55/151 and 56/81.

¹⁰⁴ See A/47/17, para. 82, and General Assembly resolution 47/34; A/48/17, para. 217, and General Assembly resolution 48/33; A/49/17, para. 97, and General Assembly resolution 49/54; A/51/17, para. 209, and General Assembly resolution 51/162; A/52/17, para. 221, and General Assembly resolution 52/158; A/56/17, para. 284, and General Assembly resolution 56/80; A/57/17, para. 141, and General Assembly resolution 57/18; A/58/17, para. 171, and General Assembly resolution 58/76; A/59/17, para. 55, and General Assembly resolution 59/40; and A/61/17, para. 181, and General Assembly resolution 61/33.